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17 SHAMROCK FOODS COMPANY

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 PAUL REIF, an individual,
21 Plaintiff,

22 v.

23 SHAMROCK FOODS COMPANY,
24 INC., an Arizona Corporation; and
25 DOES 1 to 100, inclusive,
26 Defendants.

CASE NO. 5:15-cv-00636 VAP-SP

**DEFENDANT'S OBJECTIONS TO
EVIDENCE OFFERED BY
PLAINTIFF IN OPPOSITION TO
DEFENDANT SHAMROCK FOODS
COMPANY'S MOTION FOR
SUMMARY JUDGMENT, OR IN
THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

Date: February 29, 2016
Time: 2:00 P.M.
Dept: 2
Judge: Hon. Virginia A. Phillips

Removal Date: April 2, 2015
Trial Date: April 19, 2016

Defendant Shamrock Foods Company (“Defendant” or “Shamrock”) objects to the following purported evidence offered by Plaintiff Paul Reif.

A. Declaration of Paul Reif

ITEM NO.	PURPORTED EVIDENCE	OBJECTIONS
1.	“I was re-hired by Defendant due to my skill sets and history of success for them. I experienced successes in my second round of employment with Defendant as evidenced by the reviews dated March 7, 2012 and September 27, 2012.” Reif Dec, ¶ 2 (2:06-08).	Lacks foundation and improper opinion (Fed. R. Evid. 701).
2.	“I had one of my largest accounts cancel at no fault of my own. Near that same time, another account had filed a lawsuit against Defendant also resulting in a lost account. Naturally, this had an impact on my sales numbers.” Reif Dec, ¶ 3 (2:09-11).	Lacks foundation and improper opinion (Fed. R. Evid. 701), and lacks personal knowledge (Fed. R. Evid. 602).
3.	“I began to voice concerns over some of Defendant’s business practices, which I perceived to be unlawful. This included, but was not limited to... mandating that employees use vacation days on federal and state holidays.” Reif Dec, ¶ 4 (2:13-18).	Vague, ambiguous, overbroad, and lacks foundation (Fed. R. Evid. 701).
4.	“I knew that Mr. Kennedy had been told that the Defendant’s transportation department would deliver the order to the customer because Mr. Kennedy was going to be out of town that Saturday.” Reif Dec, ¶ 5 (2:21-24).	Lacks foundation (Fed. R. Evid. 701) and inadmissible hearsay (Fed.R Evid. 802).
5.	“I acquired an estimate from German Auto and Collision for the repair for the damage to my truck. The estimate came in at \$2,780.00.” Reif Dec, ¶ 8 (3:09-11).	“Best Evidence Rule” (Fed. R. Evid 1002) since declarant seeks to prove the content of this writing through testimony.
6.	“I provided the original estimate to Bob Savage through the company interoffice	Lacks foundation (Fed. R. Evid. 701) and lacks personal

1		mail. The estimate was picked up at the	knowledge (Fed. R. Evid.
2		Palm Desert office and delivered to the	602).
3		Eastvale office for Bob Savage to	
4		arrange for reimbursing me for the	
5		damage to my vehicle.” Reif Dec, ¶ 8	
6	7.	(3:11-15).	
7		“The email stated that all of	“Best Evidence Rule” (Fed.
8		Defendant’s employees would be	R. Evid 1002) since declarant
9		charged a vacation day for New Year’s	seeks to prove the content of
10		Day, January 1, 2013. I then emailed	this writing through
11		Mr. Turner regarding this “charging” of	testimony. Further, this
12		a vacation day. I told Mr. Turner that I	statement contradicts the
13		had in fact worked on January 1, 2013,	content of the actual
14		and that I shouldn’t be charged for a	underlying email, in which
15		vacation day when I actually worked.”	Mr. Turner communicated
16		Reif Dec, ¶ 10 (3:18-23).	that January 1 would be
17			counted as a “Personal
18			Floating Holiday.” Reif
19			Depo, Vol. 2 (Ex. B), Ex. 29.
20			Reif responded, “What if we
21			were working? I know I was
22			seeing customers.” Mr.
23			Turner then replied, copying
24			his administrative staff,
25			“Don’t charge Paul.” <i>Ibid.</i>
26	8.	“Mr. Turner responded to my email and	Best Evidence Rule” (Fed. R.
27		wrote that I would not be charged for	Evid 1002) since declarant
28		the vacation day because I worked.”	seeks to prove the content of
		Reif Dec, ¶ 11 (3:24-25).	this writing through
			testimony. Further, this
			statement contradicts the
			content of the actual
			underlying email, in which
			Mr. Turner communicated
			that January 1 would be
			counted as a “Personal
			Floating Holiday.” Reif
			Depo, Vol 2 (Ex. B), Ex. 29.
			Reif responded, “What if we
			were working? I know I was
			seeing customers.” Mr.

1		Turner then replied, copying his administrative staff, “Don’t charge Paul.” <i>Ibid.</i>
2		
3	9.	“I then called Mr. Turner and expressed my concern that I perceived it to be unlawful for Defendant to charge employees for a vacation day for days in which they actually worked –especially state and federal holidays.” Reif Dec, ¶ 11 (3:25-28).
4		This declaration excerpt directly contradicts, without explanation, Mr. Reif’s prior verified discovery response, and thus this excerpt must be disregarded. See <i>Multomah County v. ACandS, Inc.</i> , 5 F.3d 1255, 1264 (9 th Cir. 1993)(affidavit contradicting prior interrogatory answers). Specifically, in his interrogatory answers, Mr. Reif described under oath this conversation in an entirely different light: “Plaintiff emailed and called Thax letting him know that Plaintiff had, in fact, worked January 1, 2013, and requesting that he not be charged for that day. Thax responded to the email saying that Shamrock wouldn’t charge him for the day. Plaintiff then called Thax again and told him that he, Plaintiff, believed that the company could charge employees for a vacation day after the fact. Thax Turner told Plaintiff not to worry....” Plaintiff’s verified answer to Interrogatory No. 5, Set One (12:17-21)(Ex. E).
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26	10.	“In December 2012, Plaintiff checked his vacation allotment on the company computer and found that he had at least 134 hours of vacation accrued. Then,
27		Best Evidence Rule” (Fed. R. Evid 1002) since declarant seeks to prove the content of this writing through
28		

1		after receiving Mr. Turner's email, Plaintiff checked his vacation hours on the company computer again and he had eight fewer vacation hours leading him to believe that Defendant had taken eight hours of vacation for the floating holiday on January 1, 2013 even though he worked that day. Also, when I received my final paycheck, I noticed that it was short by one vacation day." Reif Dec, ¶ 12 (4:01-07).	testimony. Also inadmissible hearsay (Fed.R Evid. 802). Also vague and ambiguous as to whether he is referring to vacation or floating holidays (which were separate paid benefits offered by Shamrock).
2	11.	"These chemicals were hazardous and required someone who possesses a "hazmat certified" driver's license to transport them." Reif Dec, ¶ 13(4:09-10).	Lacks foundation and improper opinion (Fed. R. Evid. 701). Further, this statement directly contradicts, without explanation, Mr. Reif's prior deposition testimony that he never researched whether a "hazmat" certification was required to transport these types of products. Reif Depo. Vol. 1 (Ex. A), 182:19-22. Accordingly, this declaration excerpt should be disregarded. <i>Cleveland v. Policy Management Systems Corp.</i> , 526 US 795, 806 (1999).
3	12.	"The next day, the delivery driver left the chemicals at the Defendant's Palm Desert office because the Department of Transportation had routed them there." Reif Dec, ¶ 13(4:11-12).	Lacks foundation (Fed. R. Evid. 701) and lacks personal knowledge (Fed. R. Evid. 602).
4	13.	"I called Chris Jenkins ("Jenkins") the Northern Regional Manager, to voice my concern about my transporting the chemicals without the proper license... Jenkins simply told me: 'Get it done.'" Reif Dec, ¶ 14 (4:22-26).	This declaration excerpt directly contradicts Mr. Reif's prior deposition testimony in which he stated that he did not know with which of his three supervisors he had this conversation.

		Reif Depo, Vol 1 (Ex. A), 183:17-24. Further, this declaration excerpt contradicts Mr. Reif's prior deposition testimony in that he previously testified that he was not instructed to transport the cleaning products. Reif Depo, Vol 1 (Ex. A), 184:13-24. Accordingly, these declaration excerpts should be disregarded in this regard.
14.	"In February 2013, I sent an email to Michelle Hendicks, one of Defendant's buyers, asking her to contact the supplier regarding some of the margarine that my customers were ordering." Reif Dec, ¶ 15 (4:27-5:01).	"Best Evidence Rule" (Fed. R. Evid 1002) since declarant seeks to prove the content of this writing through testimony. Also inadmissible hearsay (Fed.R Evid. 802).
15.	"I made this request because the State of California requires that all margarine sold be "Trans-Fat Free" under California Health and Safety Code section 114377." Reif Dec, ¶ 15 (5:01-03).	Lacks foundation (Fed. R. Evid. 701), and lacks personal knowledge (Fed. R. Evid. 602).
16.	"When I emailed Hendricks about the margarine, I copied my superior, Bob Savage, into the email as well and stressed that Defendant's non-compliance with the law could result in fines to the company. Bob Savage responded that I was correct and that Defendant needed to look into the situation." Reif Dec, ¶ 16 (5:05-08).	"Best Evidence Rule" (Fed. R. Evid 1002) since declarant seeks to prove the content of this writing through testimony. Also inadmissible hearsay (Fed.R Evid. 802).
17.	"However, regardless of Mr. Savage's understanding, I was later told by Thax Turner, Vice President of Sales (sic) to: 'stop making waves and just sell it.'" Reif Dec, ¶ 16 (5:08-10).	This declaration excerpt directly contradicts, without explanation, Mr. Reif's prior deposition testimony without explanation, and thus it should be disregarded. Specifically, Mr. Reif

1		testified under oath that he
2		did not recall with whom he
3		had this conversation, and
4		whether that individual said
5		anything about margarine.
6		Reif Depo, Vol 1 (Ex. A),
7		165:21-168:19. Mr. Reif
8		certainly did not testify that
9		he was told to “stop making
10		waves....” <i>Ibid.</i>
11	18.	Lacks foundation (Fed. R.
12	“According to the national Multiple	Evid. 701), and lacks
13	Sclerosis Society, ‘Multiple Sclerosis	personal knowledge (Fed. R.
14	(“MS”) is an unpredictable, often	Evid. 602).
15	disabling disease of the central nervous	
16	system that disrupts the flow of	
17	information within the brain, and	
18	between the brain and body.” Reif	
19	Dec, ¶ 18 (5:15-18).	
20	19.	This declaration excerpt
21	“During this call, I also told Mr. Jenkins	directly contradicts, without
22	that I will need to take more time off of	explanation, Mr. Reif’s prior
23	work because of my step-daughter’s	deposition testimony
24	recent diagnosis and condition...I said	concerning this purported
25	that I needed to take off time to care for	telephone conversation, and
26	my stepdaughter and I wanted to know	thus it should be disregarded.
27	if I could do that under the FMLA.”	According to his prior
28	Reif Dec, ¶ 20 (5:23-28).	deposition, Mr. Reif did not
		tell Mr. Jenkins that he
		needed to take off time “to
		care for” his stepdaughter,
		nor did he request time off
		under the “FMLA.” Instead,
		he testified that he told
		Mr. Jenkins that “my
		daughter was just diagnosed
		with MS” and that “I didn’t
		know enough about the
		disease and I didn’t know
		what all it was going to entail.
		And that what, -- I asked him
		– I said, you know, “ I don’t

		know if I have to use – I’m going to have to use up my vacation time or I don’t know enough about FMLA and how we have to go to do this.” Reif Depo, Vol 1 (Ex. A), 196:04-197:02 (emphasis). Mr. Jenkins told him to take the day off and check with him the next day. <i>Ibid.</i>
20.	“Nor did Shamrock provide me with notice of my rights, responsibilities or the need for medical certification.” Reif Dec, ¶ 21 (6:02-04).	This declaration excerpt directly contradicts, without explanation, Mr. Reif’s prior deposition testimony, and thus it should be disregarded. In deposition, Mr. Reif admitted that he received the employee handbook, which provided specific notice of his rights and responsibilities under the FMLA and CFRA. Reif Depo, Vol 1 (Ex. A), 49:08-16, Exs 3 and 7 (pages 21 to 25).
21.	“Nonetheless, Defendant was fully aware of my daughter, her medical diagnosis, and the reality that I would take off to care for her. Reif Dec, ¶ 24 (6:21-22).	Vague and ambiguous. Lacks foundation (Fed. R. Evid. 701) and lacks personal knowledge (Fed. R. Evid. 602).

B. Declaration of Rosemary Amezcua-Moll

ITEM NO.	PURPORTED EVIDENCE	OBJECTIONS
22.	Exhibit A (“Vacation Computation”).	This document does not have any bates designation and thus it was not produced by Defendant in this litigation (which would have the prefix

1		“SFC-R” and a bates
2		number). This document has
3		not otherwise been
4		authenticated by a witness
5		who has personal knowledge
6		that the document is what it
7		purports to be. Fed. R. Evid.
8		901; <i>Orr v. Bank of Am.</i> , 285
9		F.3d 764 at 778 (9th Cir.
10		2002). The document also is
11		inadmissible hearsay. Fed. R.
12		Evid. 802.
13	23.	Exhibit B (“Profit Percentages”).
14		This document does not have
15		any bates designation and
16		thus it was not produced by
17		Defendant in this litigation
18		(which would have the prefix
19		“SFC-R” and a bates
20		number). This document has
21		not otherwise been
22		authenticated by a witness
23		who has personal knowledge
24		that the document is what it
25		purports to be. Fed. R. Evid.
26		901; <i>Orr, supra</i> , 285 F.3d at
27		778. The document also is
28		inadmissible hearsay. Fed. R.
	24.	Exhibit C (“final paystub”).
		This document does not have
		any bates designation and
		thus it was not produced by
		Defendant in this litigation
		(which would have the prefix
		“SFC-R” and a bates
		number). This document has
		not otherwise been
		authenticated by a witness
		who has personal knowledge
		that the document is what it
		purports to be. Fed. R. Evid.
		901; <i>Orr, supra</i> , 285 F.3d at

1		778. The document also is
2		inadmissible hearsay. Fed. R.
3		Evid. 802.
4	25. Exhibit D (“Performance Evaluation”).	This document was produced
5		by Plaintiff (as evidenced by
6		Plaintiff’s “PR” bates
7		designation). Defendant’s
8		production would have had
9		the prefix “SFC-R” and a
10		bates number. This document
11		has not otherwise been
12		authenticated by a witness
13		who has personal knowledge
14		that the document is what it
15		purports to be. Fed. R. Evid.
16		901; <i>Orr, supra</i> , 285 F.3d at
17		778. The document also is
18		inadmissible hearsay. Fed. R.
19		Evid. 802.

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DATED: February 12, 2016

CONN MACIEL CAREY LLP

By: /s/ Andrew J. Sommer

Andrew J. Sommer
Attorneys for Defendant
SHAMROCK FOODS COMPANY